IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

WP(C).No. 28020 of 2006(I)

PETITIONER:

KURILAND (P) LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR,
E.A. JOHNY, KURILAND TOWER,
MARAR ROAD, THRISSUR.

BY ADV. SRI.S.RAMESH BABU

RESPONDENTS:

1.THE CHALAKUDY MUNICIPALITY
REPRESENTED BY ITS SECRETARY,
MUNICIPAL OFFICE, CHALAKUDY.

2.STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

R1 BY ADV. SRI.M.P.ASHOK KUMAR
R2 BY GOVT. PLEADER MR.MATHEW G.VADAKKEL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

- -

W.P.(C)No.28020 of 2006

- -

Dated: 14th December, 2006

JUDGMENT

The petitioner-Company is aggrieved by Ext.P5 order passed by the 1st respondent-Municipality rejecting the petitioner's application for building permit for construction of a hotel building on their properties in survey No.293/1 of East Chalakudy Village.

2. Even though several chances were given for filing of a counter affidavit, no counter affidavit has been so far filed by the Municipality. Mr.S.Ramesh Babu, learned counsel for the petitioner presses for interim orders directing issuance of a building permit and I have accordingly heard the submissions of Mr.Ramesh Babu and also those of Mr.M.P.Asok Kumar, learned Standing Counsel for the 1st respondent-Muncipality apart from those of Mr.Mathew G.Vadakkel, learned Government Pleader on behalf of the 2nd respondent.

3. Ext.P2 Memorandum and Articles of Association of the petitioner-Company will reveal that acquisition of land and construction of hotels is one of the objectives of the Company. The Company purchased the land in question by virtue of four separate sale deeds registered with the Chalakudy Sub Registry. The land has direct frontage of National Highway 47 and is situated a little beyond

the main junction of Chalakudy Municipality. In the said land there is an existing hotel building by name 'Hotel Vrindavan Palace'. The petitioner relies on Ext.P3 order of the Government to show that it was on the strength of that exemption order that their predecessors Rajagopal and others are able to construct the existing building on the land. Under Ext.P3 the construction of the building by Mr.Rajagopal and others have been exempted from the zoning regulations of the D.T.P.Scheme sanctioned under Section 12 of the Town Planning Act in the year 1983 for the Chalakudy Municipal area. The petitioner-Company submits that apart from the total extent of 70.05 cents of land upon which the existing hotel building is situated, the Company has acquired another extent of 33 cents in the same survey number under document No.4114/2003 and are presently under the ownership and possession of a total extent of 103.29 cents. The Company has resolved to demolish the existing building and construct a Three Star Hotel which will meet the requirements of the Chalakudy town which is yet to have such a hotel. The proposed hotel is to be constructed strictly upon the 70.05 cents of land in survey No.293/1 in respect of which Ext.P3 exemption order was passed by the Government. Ext.P4 is copy of the site plan etc. submitted by the

petitioner before the Municipality along with the application for building permit. In response to the permit application the Secretary of the Municipality has issued Ext.P5 letter dated 1.6.2006 to the Chairman of the petitioner-Company informing that the application is being rejected because it was noticed on inspection that the land upon which the construction is proposed to be made is set apart for public and semi public purposes under the D.T.P.Scheme for office complex and therefore the application is liable to be rejected. The petitioner complains that even though they approached the Municipality requesting for a copy of the D.T.P.Scheme, the same was not furnished. However, in response to another letter submitted by the petitioner seeking details regarding the building permits issued by the Municipality based on zonal exemptions granted by the Government, the Municipality has issued Ext.P6 letter. Ext.P6 shows that deviating from the D.T.P.Scheme and on the strength of Government exemption from zoning regulation as per that scheme as many as 10 permits have been issued by the Municipality.

4. The following are the prayers in the Writ Petition:

1. To quash Ext.P5 order;

2. Issue a writ of mandamus commanding the 1st respondent to

reconsider Ext.P4 in the light of Ext.P3 order.

3. To declare that the D.T.P.Scheme relating to the Chalakudy East Village for office complex including the reservation of use of the property in Survey No.293/1 for public and semi public purposes has lapsed/become unworkable and in any event inapplicable to the aforesaid property and that the petitioner-Company will be entitled to proceed with the construction as proposed in Ext.P4 subject to the provisions of the Kerala Building Rules, 1994; and

4. Issue a writ of mandamus commanding the respondents to act on the basis of the declaration as sought for in prayer No.3 by issuing necessary sanction and permit for the construction of tha Three Star Hotel in the property owned by the petitioner.

5. As already indicated, no counter affidavit has been filed in spite of several chances being given for that purpose. Even though strictly speaking Ext.P5 order rejecting the building permit may be appealable under the provisions of the Statute, since it is seen that Ext.P5 order has been passed without any reference to Ext.P3 order of the Government issued in favour of the predecessor of the petitioner-Company, I am of the view that it is necessary that the first respondent-Municipality reconsiders the issue. I find some merit

in the contention of the counsel for the petitioner that Ext.P3 will enure to the benefit of the petitioner also especially since it is not disputed that on the strength of Ext.P3 a hotel building was constructed and the same is even now functioning. The present proposal is actually to demolish the existing building and reconstruct the same as a Three Star Hotel. Under these circumstances, allowing the Writ Petition in part, the following orders will be passed:

Ext.P5 is quashed and the first respondent-Municipality is directed to reconsider Ext.P4 in the light of Ext.P3 Government Order. Fresh orders as directed above will be passed by the first respondent after hearing the petitioner at its earliest and at any rate within one month of receiving a copy of this judgment.

srd **PIUS C.KURIAKOSE, JUDGE**